



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.18845 of 2016 and
W.M.P.(MD)No.13623 of 2016

S.Ayyappan

... Petitioner

Vs

1. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation (TANGEDCO)
No.144, Anna Salai, N.P.K.R.R. Maaligai,
Chennai.

2. The Superintending Engineer,
Thoothukudi Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO)
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order of the 1st respondent dated 03.09.2016 vide Memo No.048992/603/G5/G51/2016 and quash the same in the light of the Apex Court in "Ajaykumar Choudhary vs. Union of India others" dated 16.02.2015 and also in the light of the letter issued by the Government of Tamil Nadu through its Personal and Administrative Reforms (N) Department vide letter No.13519/N/2015-1 dated 23.07.2015 and consequently, direct the 1st respondent to post the petitioner in any other non-sensitive post.

For Petitioner : Mr.Prabhu
for M/s.Polax Legal Solutions
For Respondents : Mr.T.Sakthikumarn
Standing Counsel

ORDER

This writ petition is filed for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent dated 03.09.2016 and quash the same and consequently, direct the 1st respondent to post the petitioner in any other non-sensitive post.

2. The case of the petitioner is that he was appointed as Helper (Trainee) in the respondent Corporation on 04.01.1991, thereafter, he was promoted as Helper (Regular) on 04.01.1994. Subsequently, he was appointed as Assessor through internal selection on 27.07.1994. Thereafter, he was promoted as Inspector



of Assessment on 10.11.2011. While so, a complaint has been lodged against him, alleging that he has demanded a sum of Rs.5000/- as illegal gratification other than the legal remuneration for not taking any action against a person for having misused the electricity. Based on the said complaint, a case in Cr.No.3 of 2013 was registered for the offence under Section 7 of the Prevention of Corruption Act. Subsequently, a suspension order was also passed by the first respondent, vide order dated 26.04.2013. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that since no charge sheet was filed against the petitioner, he submitted a representation dated 11.09.2013 to the 1st respondent seeking revocation of suspension order. However, no order was passed on the said representation. The learned counsel further submitted that though the petitioner was placed under suspension in the year 2013, till date, the suspension was not revoked and as per the decision of the Hon'ble Supreme Court, in the case of **Ajay Kumar Choudhary Vs Union of India (2015 (7) SCC 291)** and **State of Tamil Nadu Vs Pramod Kumar (2018 SCC Online SC 1079)**, the prolonged suspension is illegal. Hence, he prayed for allowing the writ petition.

4. The learned standing counsel appearing for the respondents submitted that the charges framed against the petitioner are grave in nature and it relates to demand of illegal gratification of Rs.5,000/- for not taking any action against the person for having misused the electricity. Further, a case in Cr.No.3 of 2013 was also registered against the petitioner. Therefore, the petitioner was placed under suspension. Hence, he prayed for dismissing the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

6. The Supreme Court in **1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri)** has held in paragraph 7 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority.

** * * * **

7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and



indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

7. Once again, the Supreme Court in **1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others)** held in paragraph 10 as follows:

"10.....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled....."

11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence....."

8. From the ratio laid down in the aforesaid decisions, it is clear that the authority, vested with the right to pass the order of suspension, shall exercise the same in accordance with law and if at all the petitioner is aggrieved, he has to avail his remedy in a manner known to law.



9. In the case on hand, the allegation against the petitioner is that he demanded an illegal gratification of Rs.5,000/- for not taking any action against the person for having misused the electricity, a perusal of which shows that the charges are grave in nature. Such being the case, the decision of the Hon'ble Apex Court in *Ajay Kumar's case* and *Pramod Kumar's case (supra)* would not stand attracted to the case of the petitioner. Only if the delinquent is kept on continued suspension without there being any further action, the above decisions can be taken aid of. In the case on hand, a criminal machinery has been set in motion by registration of a crime. In such case, the decision in *Ratnagiri's case (supra)* would stand attracted. Therefore, without completion of the criminal case, quashing of the order of suspension would not be justified.

10. For the reasons aforesaid, this Court is of the considered view that the writ petition deserves to be dismissed and, accordingly, the same is dismissed. However, it is open to the petitioner to seek a review of the order of suspension by making a fresh representation before the competent authorities and if any such representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

OGY

To

1. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation (TANGEDCO)
No.144, Anna Salai, N.P.K.R.R. Maaligai,
Chennai.
2. The Superintending Engineer,
Thoothukudi Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation (TANGEDCO)
Thoothukudi.

Order made in
W.P. (MD)No.18845 of 2016 and
W.M.P. (MD)No.13623 of 2016
12.02.2021

NA (CO)

SRS (12/03/2021) 4P : 3C

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